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FEB 25 2010
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

In re the ESTATE OF LOIS A. KNOTT, Deceased.	2 CA-CV 2009-0013 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure
ROBERT FLEMING, Personal Representative of the Estate of Lois A. Knott; and MICHAEL McCUNE, individually, Plaintiffs/Appellees, v. MARK McCUNE, Defendant/Appellant.	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. PB-20061130

Honorable John F. Kelly, Judge

AFFIRMED

William E. Druke
Tucson
Attorney for Plaintiff/Appellee
Robert Fleming

Slosser, Hudgins, Struse & Freund P.L.C.
By Ronna L. Fickbohm — Tucson
Attorneys for Plaintiff /Appellee
Michael McCune

Mark McCune — Tucson
In Propria Persona

B R A M M E R, Judge.

¶1 Mark McCune ("McCune") appeals from stipulated judgments entered in a quiet title action and from the trial court's amendment of one of them. He argues that the stipulated and amended judgments contain errors, that he agreed to the stipulated judgments under duress, and that the court was intoxicated when it signed the amended judgment. We affirm.

Factual and Procedural Background

¶2 McCune does not support his statement of facts with citations to the record, instead citing various documents appended to his opening brief. *See* Ariz. R. Civ. App. P. 13(a)(4) (statement of facts in appellant's brief must contain "appropriate references to the record"). We have therefore disregarded his statement of facts and instead rely on the appellees' statement of facts and our review of the record. *See Flood Control Dist. v. Conlin*, 148 Ariz. 66, 68, 712 P.2d 979, 981 (App. 1985). We view those facts in the light most favorable to affirming the trial court's judgments. *Sw. Soil Remediation, Inc. v. City of Tucson*, 201 Ariz. 438, ¶ 2, 36 P.3d 1208, 1210 (App. 2001).

¶3 In January 2006, the Alfred L. McCune Trust conveyed a parcel of real property (Craycroft parcel) to McCune and his half-brother, appellee Michael McCune ("Michael"), as tenants in common. One month later, McCune executed a quitclaim deed conveying his interest to his mother, Lois Knott, in return for her forgiving certain debts McCune owed her. Knott died six months later.

¶4 In September 2006, Michael filed a "Petition for Adjudication of Testacy, Determination of Heirs and Appointment of Personal Representative." McCune opposed the petition. After an evidentiary hearing, the trial court determined that Knott had died intestate and that McCune was her sole heir. The court further determined, however, that McCune was "an inappropriate person" to administer the Craycroft parcel. It later appointed appellee Robert Fleming as personal representative of Knott's estate.

¶5 Fleming filed a complaint in June 2007 seeking both to quiet title and partition the Craycroft parcel and to quiet title to two other parcels of property (the Frannea and McKinley parcels). Nearly a year later, the parties entered into a stipulation resolving the action. The trial court ordered the parties to prepare judgments and submit them for signature. After they had done so, the court entered two judgments in May 2008, both of which McCune approved by signing. One judgment ("partition judgment") established that Michael and Knott's estate owned the Craycroft parcel as tenants in common and that McCune had no interest in the property. It also directed the sale of that parcel and partition of the proceeds. The other ("quiet title judgment") voided numerous quitclaim deeds and liens recorded on the three properties.

¶6 Fleming then moved to amend the quiet title judgment to include language voiding two quitclaim deeds that purported to convey to McCune ".001 percent" of Knott's interest in the Frannea and McKinley parcels, asserting the parties had intended those two deeds be included in the stipulated judgment. The trial court signed the amended judgment over McCune's objection, and the judgment was entered on December 15, 2008. This appeal followed.

Discussion

¶7 McCune's opening brief does not comply in any meaningful way with Rule 13(a), Ariz. R. Civ. App. P. It contains no standard of review, citations to the record, or citations to pertinent legal authority. McCune's failure to comply with Rule 13(a) could justify our summary refusal to consider his appeal. *See In re $26,980.00 U.S. Currency*, 199 Ariz. 291, ¶ 28, 18 P.3d 85, 93 (App. 2000) ("[Appellant's] bald assertion is offered without elaboration or citation to any . . . legal authority. We will not consider it."); *Brown v. U.S. Fid. & Guar. Co.*, 194 Ariz. 85, ¶ 50, 977 P.2d 807, 815 (App. 1998) ("This assertion is wholly without supporting argument or citation of authority, and accordingly[,] we reject it."). Despite McCune's pro se status, he is held to the same standards as a qualified attorney. *See Old Pueblo Plastic Surgery, P.C. v. Fields*, 146 Ariz. 178, 179, 704 P.2d 819, 820 (App. 1985). Nonetheless, because we prefer to resolve cases on their merits, *Clemens v. Clark*, 101 Ariz. 413, 414, 420 P.2d 284, 285 (1966), we will attempt to discern and address the substance of McCune's arguments.

¶8 McCune first asserts the amended judgment is "not correct" because it, like the quiet title judgment, "creates the illusion" that he has no interest in the three parcels at issue. Having stipulated to the terms of the quiet title judgment, McCune cannot now attack that judgment on appeal. *Wolf Corp. v. Louis*, 11 Ariz. App. 352, 355, 464 P.2d 672, 675 (1970) ("A stipulation is a judicial admission constituting an abandonment of any contention to the contrary, and one who has stipulated to certain facts is foreclosed from repudiating them on appeal."); *Cofield v. Sanders*, 9 Ariz. App. 240, 242, 451 P.2d 320, 322 (1969) ("It is well settled that ordinarily a consent judgment is not subject to appellate review.").

¶9 Moreover, the only difference between the stipulated judgment to which McCune agreed and the amended judgment to which he objected is the inclusion of language voiding two quitclaim deeds associated with the Frannea and McKinley parcels. The amended judgment made no other modifications to the initial quiet title judgment, and McCune does not explain how the amended judgment altered his interest, if any exists, in the Frannea and McKinley parcels. He neither asserts the trial court erred in amending the judgment to void those quitclaim deeds nor contests Michael's and Fleming's assertion that the parties had intended for the stipulated judgment to void them. Because McCune agreed to the terms of the initial quiet title judgment and has failed to articulate any reason the amendment of that judgment was improper, we decline to address this argument further. *See In re $26,980.00*, 199 Ariz. 291, ¶ 28, 18 P.3d at 93;

Brown, 194 Ariz. 85, ¶ 50, 977 P.2d at 815; *Wolf Corp.*, 11 Ariz. App. at 355, 464 P.2d at 675; *Cofield*, 9 Ariz. App. at 242, 451 P.2d at 322.

¶10 McCune next asserts Knott "did not own [half] of" the Craycroft parcel at the time of her death and therefore her estate could not have the interest in the parcel described in the partition judgment. But, again, having stipulated to that judgment, McCune cannot now contest its terms. *See Wolf Corp.*, 11 Ariz. App. at 355, 464 P.2d at 675; *Cofield*, 9 Ariz. App. at 242, 451 P.2d at 322. McCune additionally argues he was under duress when he agreed to the stipulated judgments. But he did not file a motion seeking relief from the judgment pursuant to Rules 59(a) or 60(c), Ariz. R. Civ. P., nor did he otherwise attempt to raise this issue in the trial court. He therefore has waived this argument, and we do not address it further. *See Maher v. Urman*, 211 Ariz. 543, ¶ 13, 124 P.3d 770, 775 (App. 2005) (arguments not raised in trial court waived on appeal). For the same reasons, we do not address his scurrilous assertion the trial court was intoxicated when it signed the amended judgment.

¶11 Michael and Fleming assert McCune's appeal is groundless and request attorney fees on appeal pursuant to A.R.S. § 12-341.01(C) and Rule 21(c), Ariz. R. Civ. App. P. Section 12-341.01(C), however, does not permit us to award fees solely because a claim or defense is groundless. Instead, fees may be granted only "upon clear and convincing evidence that the claim or defense constitutes harassment, is groundless and is not made in good faith." § 12-341.01(C). Although McCune's appeal plainly is

groundless, because Michael and Fleming do not assert it was brought in bad faith or constitutes harassment, we deny their request for attorney fees.

Disposition

¶12 We affirm the stipulated and amended judgments but deny Michael's and Fleming's request for attorney fees on appeal.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Judge